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SERVICE DATE - OCTOBER 23, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 542 (Sub-No. 9)

REGULATIONS GOVERNING FEES FOR SERVICES PERFORMED IN CONNECTION
WITH LICENSING AND RELATED SERVICES – POLICY STATEMENT

AGENCY: Surface Transportation Board, Transportation.

ACTION: Policy Statement.

SUMMARY: The Surface Transportation Board (Board) clarifies the scope of its rule assessing a fee for filing an appeal to a Surface Transportation Board adjudicative decision or a petition to revoke a notice of exemption as including all forms of appeal from all types of adjudicative decisions on the merits. This fee applies to petitions to revoke and petitions to reject, even where the petitioning party has not had an earlier opportunity to present its views to the Board.

DATES: This policy statement is effective immediately.

FOR FURTHER INFORMATION CONTACT: Anne K. Quinlan, (202) 565-1727. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: Under the Independent Offices Appropriations Act, 31 U.S.C. 9701 (IOAA), federal agencies are obliged to establish fees for specific services provided to identifiable beneficiaries. Office of Management and Budget (OMB) Circular No. A-25 contains guidelines for agencies to apply in assessing and collecting those fees.

Pursuant to the IOAA and Circular No. A-25, the Board established a fee item, at 49 CFR 1002.2(f)(61), covering “Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d).” The \$150 fee, which recovers only a small portion of the costs incurred in handling these types of matters, was proposed to apply to “most appeals to the Board’s decisions.” To illustrate some examples, the Board stated:

The fee would cover the following types of appeals: (1) an appeal of right to an initial decision as set forth [at] 49 CFR 1115.2; (2) a petition for administrative review as set forth [at] 49 CFR 1115.3; (3) a petition to reopen an administratively final decision as set forth in 49 CFR 1115.4; and (4) a petition to revoke an exemption pursuant to 49 U.S.C. 10502(d).

Regulations Governing Fees for Service, STB Ex Parte No. 542 (STB served Apr. 4, 1996), at 8-9.

In a different phase of the 1996 rulemaking proceeding in Ex Parte No. 542, some parties asked us not to apply fee item 61 to petitions to revoke filed in exemption proceedings in which the carrier seeking a license has already paid a fee, arguing that any expenses borne by the agency to consider the petition to revoke should already have been built into the fee paid by the carrier seeking the license. We rejected the argument and explicitly found that “the costs for administrative appeals are [not] included in the costs for the initial proceeding. . . . Our costs for a proceeding do not include costs for staff time expended beyond issuance of the initial decision. . . .” Regulations Governing Fees for Service, 1 S.T.B. 179, 202 (1996) (1996 Fee Update). The Board confirmed this ruling in denying a further request for reopening. Regulations Governing Fees for Service, 1 S.T.B. 883, 886 (1996), aff’d sub nom. United Transp. Union-Illinois Legislative Bd. v. STB, No. 97-1038 (D.C. Cir. Nov. 10, 1997), 1997 U.S. App. LEXIS 37560.

This matter apparently continues to produce some uncertainty, and we therefore wish to make it clear that fee item 61 was always intended to apply to petitions to revoke or to reject exemptions, even when the party has not had an earlier opportunity to present its views to us. As we indicated in our prior decisions, these appeals and petitions generate substantial work on our part — far more than is reflected by the nominal fee charged — and the costs have never been covered by the fees paid with the initial filing. Therefore, under the IOAA, we are obliged to establish a fee for these specific services provided to identifiable beneficiaries. Of course, as we stated in adopting fee item 61, any party for whom the nominal filing fee poses a hardship may seek a waiver of the fee in an individual case.

We do not propose a new rule or policy here, as we are simply confirming that we have always considered fee item 61 to cover appeals and petitions to revoke or reject an exemption, even when the petition is the filer’s first opportunity to inform us of the filer’s views. For that reason, we do not seek public comment on this announcement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: October 16, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary